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June 7, 2000

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Ex Parte Filing**

Magalie Salas, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
12<sup>th</sup> Street Lobby, Room TW-A325  
Washington, D.C. 20554

Re: Pay Telephone Reclassification and Compensation Provisions of the  
Telecommunications Act of 1996, CC Docket No. 96-128

Dear Ms. Salas:

On June 6, Marie Breslin of Bell Atlantic, Michael Kellogg, and I met on behalf of the RBOC/GTE Payphone Coalition with Tamara Preiss, Jay Atkinson, and Adam Dandub of the Common Carrier Bureau, to discuss matters in the above-referenced docket related to inmate payphone service. The attached document summarizes the substance of our presentation; the attached diagrams were used to illustrate typical service configurations.

One original and one copy of this letter are being submitted to you in compliance with 47 C.F.R. § 1.1206(a)(2) to be included in the record of this proceeding. If you have any questions concerning this matter, please contact me at (202) 326-7921.

Sincerely,



Aaron M. Panner

Enclosure

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List A B C D E

## **Inmate Payphones: Clearing Up Misconceptions**

The Inmate Calling Service Provider Coalition ("ICSPC") contends that LECs cross-subsidize their affiliated inmate operations and discriminate against independent inmate calling service providers. Specifically, they argue that LECs improperly absorb the bad debt of their inmate operations. They also contend that LECs discriminate against independent payphone providers in the provision of information necessary to prevent unbillables and fraud.

Neither claim has any basis in fact. Indeed, both claims appear to rest on a fundamental misconception of the relationship between LEC operator services and LEC payphone operations. Moreover, neither claim is specific to inmate payphones. The relationship between LEC OS operations and LEC payphone operations is the same for all payphones. It is governed by the *Computer III* and *ONA* nonstructural safeguards. The Commission has determined that these regulations will "ensure that BOCs do not discriminate or cross-subsidize in their provision of payphone service." *First Payphone Order*,<sup>1</sup> 11 FCC Rcd at 20640, ¶ 199; *see also id.* at 20641, ¶ 200 (describing safeguards). Pursuant to those regulations, all service offerings that the BOCs provide to their payphone operations, whether inmate or non-inmate, are available on nondiscriminatory terms and conditions to independent payphone operations.

To treat operator services provided by LECs in conjunction with inmate service differently from any other LEC operator services would be a sharp departure from prior Commission practice. The Commission has clearly declined to require the deregulation of operator services, as opposed to payphone equipment. *See id.*, 11 FCC Rcd at 20622, ¶ 159; *CAM Order*,<sup>2</sup> 12 FCC Rcd at 15153-54, ¶ 20; *CAM Order on Review*,<sup>3</sup> 14 FCC Rcd at 16787-88, 16791-92, ¶¶ 6, 11, 12. Accordingly, the costs and revenues associated with LEC provision of those services must be attributed to regulated operations. Nothing in section 276 would require the Commission to depart from this approach.

**Operator Services Are Distinct From Inmate Services.** The ICSPC is not satisfied with the current state of regulation, in which inmate service is deregulated while LEC operator services remain regulated. It wants to see LEC operator services deregulated as well — but only if the operator services are provided on a call from an inmate facility. That position would be a

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<sup>1</sup>Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 20541 (1996).

<sup>2</sup>Memorandum Opinion and Order, *Local Exchange Carriers Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs*, 12 FCC Rcd 15145 (1997).

<sup>3</sup>Memorandum Opinion and Order, *Local Exchange Carriers Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs*, 14 FCC Rcd 16784 (1999).

sharp departure from prior Commission regulation and has no basis in the statute or in sound policy.

In the *First Payphone Order*, the FCC ordered LECs to transfer payphone assets to deregulated accounts, and to treat payphone revenues as deregulated revenues. 11 FCC Rcd at 20622, ¶ 159. However, the deregulated assets did not include “operator service facilities supporting incumbent LEC payphones.” *Id.* As the Common Carrier Bureau explained in approving LEC CAM revisions filed in response to the *Payphone Orders*:

there is no support in the *Payphone Order* or the *Payphone Reconsideration Order* for the contention that BOCs or other ILECs are required to provide collect calling as a nonregulated service when used with inmate payphones. Because it is appropriate for ILECs to continue to treat inmate collect calling as a regulated service, we reject the argument advanced by APCC and ICSPC that the uncollectibles associated with inmate collect calling must be included in nonregulated cost pools.

12 FCC Rcd at 15153-54, ¶ 20. The Commission affirmed this determination and specifically held that “[b]oth store-and-forward collect calling and coin sent-paid intraLATA toll calls fall within [the Act’s] definition of operator services.” *CAM Order on Review*, 14 FCC Rcd at 16791, ¶ 11 & n.38.

This makes sense and is entirely consistent with the way other, non-inmate payphones are regulated. When a customer makes an intraLATA or local collect call from a LEC-affiliated payphone, the LEC may provide the operator services; it would then pay a commission to the LEC-PSP, which pays a commission to the location provider. The revenues (and costs) of the operator services are booked to regulated operations. The situation is precisely the same with an inmate call.

The fact that operator services are treated in the same manner in connection with public payphone service and inmate service again underlines the essential fallacy of the ICSPC’s position. Section 276 draws a distinction between payphone service operations and local exchange operations; section 276 does *not* require a LEC to treat operator services as part of payphone service. On the contrary, the Commission has always drawn a line between the provision of the CPE on the one hand — which is the business of the deregulated payphone service provider operations — and LEC provision of transmission and operator services on the other hand. The Commission may continue to adhere to this line.

It is true that LECs *may* provide operator services for inmate calls using equipment that is deployed at the inmate facility — a so-called “operator-in-a-box.” In that situation, the LEC deploys an on-site operator services platform that can perform call control functions that are essential to the inmate facility — ensuring that the inmate calls only authorized numbers, for example — as well as verifying that the called party is willing to accept the charges for the

collect call. But the Commission has reasonably determined that the type of equipment used to provide the operator services should not make a difference. *See CAM Order on Review*, 14 FCC Rcd at 16791, ¶ 11. Rather, it is the nature of the service itself — in this case, 0+ collect calling — that the Commission has determined should determine the allocation of costs and revenues.<sup>4</sup>

The approach that the APCC appears to advocate — preemptive federal deregulation of LEC operator services provided to inmate institutions — would be difficult to administer and would bring no corresponding benefit. In some circumstances, the LEC uses the same facilities to provide operator services to inmate institutions as it uses to provide operator services to other end-users. Accordingly, to force the LEC to attempt to distinguish the equipment or human resources costs associated with regulated and nonregulated operator services would be unnecessarily burdensome.

**Specific Claims Made by the ICSPC.** As the foregoing discussion makes clear, the ICSPC's arguments fail to recognize the essential difference between operator services and unregulated provision of payphone service. Nor can the ICSPC offer any reason to alter the status quo. All of its claims of subsidy and discrimination are based on a misunderstanding of the facts, or on completely implausible claims about BOCs' business motives. The reality is that independent inmate providers face no disadvantage because of their unaffiliated status.

*Bad Debt:* The ICSPC claims that BOCs should not be able to book receivables to regulated accounts because it makes their uncollectible rates for inmate-related receivables appear to be lower than they actually are, permitting LEC-affiliated inmate providers to outbid independents for contracts by paying higher commission rates. This claim makes no sense. As an initial matter, when a LEC provides operator services, the operator service receivables belong to the LEC; naturally, the bad debt expense associated with the receivables must likewise be realized by the LEC.

This does not give LEC affiliated inmate providers any advantage, for two reasons. First, LECs generally operate under price-cap regulation, so any losses they suffer in providing operator services to inmate institutions cannot be made up through other services. Accordingly, a LEC has every reason carefully to track the degree of bad debt associated with operator services provided to inmate institutions and to calibrate the commissions paid to reflect those

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<sup>4</sup> The ICSPC utterly fails to take account of the variety of business arrangements that exists among LEC-affiliated inmate calling service providers. As a matter of fact, not all LEC PSPs use LEC OS. They may instead use OS provided by a third party vendor. The costs and revenues associated with that business deal would be booked to nonregulated accounts. Likewise, a separate subsidiary might provide its own OS; if that subsidiary is not a LEC, it is not subject to Part 64, and all its costs and revenues are nonregulated. The variety of existing business strategies emphasizes that the advantages that LEC inmate providers supposedly enjoy because operator services revenue is booked to regulated accounts simply do not exist.

uncollectibles. To absorb the bad debt would be self-destructive. Second, LEC operator services are available to independents on the same terms and conditions as to its affiliated inmate operation. They cannot confer an advantage on their affiliated inmate provider without making the same advantage available to independent providers.

*Fraud Control:* For years, the ICSPC has been claiming that BOCs provide fraud control capabilities to their affiliated inmate operations that they do not provide to independents. As the RBOC/GTE Coalition has repeatedly emphasized, however, this claim is untrue. *See* Reply Comments of the RBOC/GTE Payphone Coalition on Inmate Payphone Service Proceeding, CC Docket No. 96-128 (filed July 21, 1999). All services that the LEC makes available to its payphone operation must be made available to independents on the same terms and conditions. To the extent LECs have developed fraud control procedures as part of their OS operations, these same procedures are available to independents who purchase LEC OS. To the extent independent inmate providers use independent OSPs (or provide their own OS), it is their responsibility to develop fraud control procedures. There is no discrimination, just competition.

Pushed to provide an example of discrimination, the ICSPC came up with "Code 50 Rejects." *See* ICSPC Ex Parte (May 17, 2000). It claims that the line information database ("LIDB") "on which independent inmate service providers must rely" does not indicate that a called number is served by a CLEC. The ICSPC's claim is based on a misunderstanding of LIDB and the routing of calls in the current competitive environment.

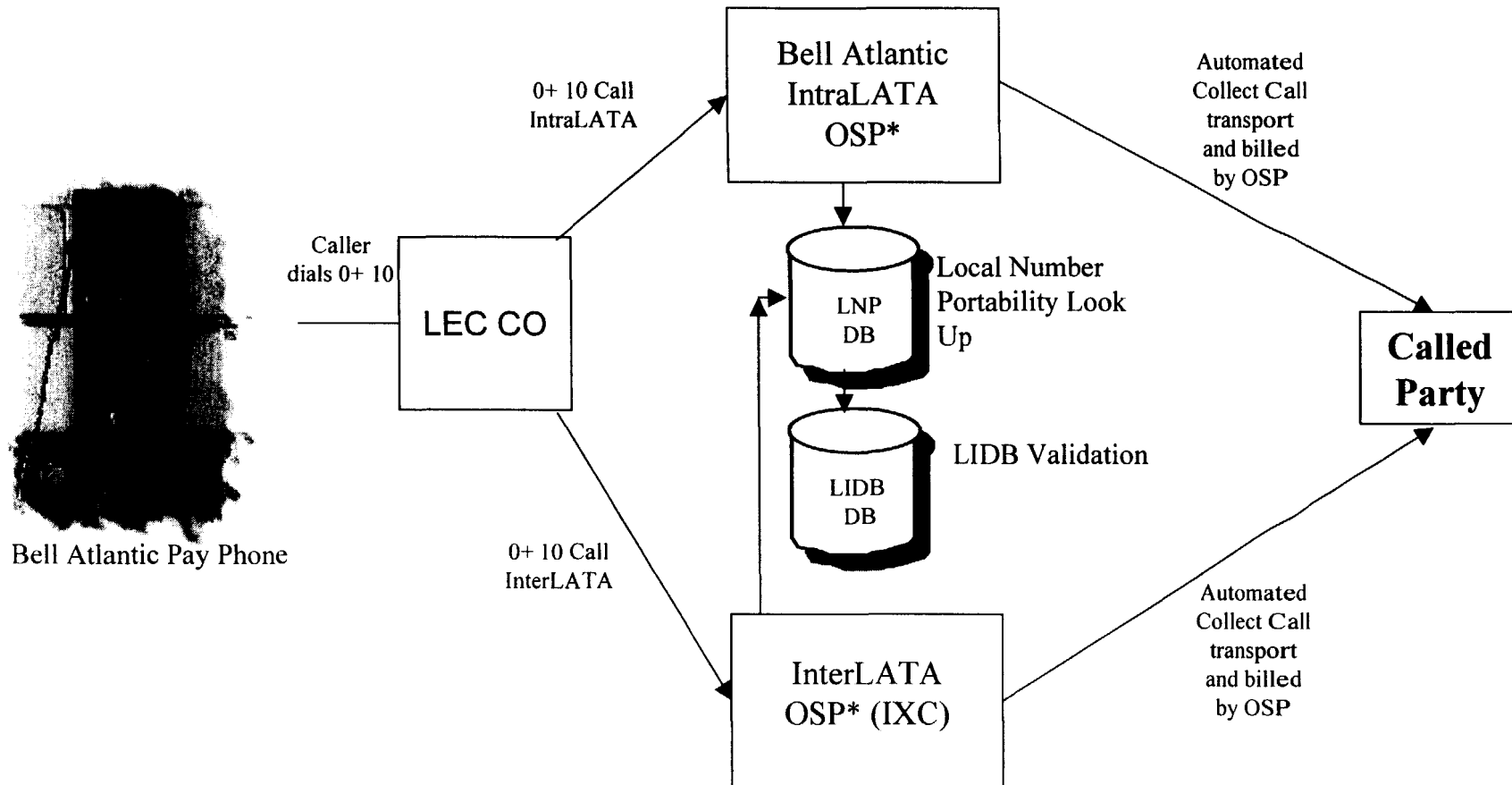
When an OSP routes a call, it is supposed to take two steps. First, it should check the Local Number Portability database, which indicates the Local Routing Number — the network address for the called number. That information indicates whether a called number is served by the incumbent LEC or a CLEC. Moreover — and this point is crucial — the LNP database indicates which LIDB the OSP should consult to determine whether there are any restrictions on the line. LNP databases and LIDB are competitive services, and many facilities-based CLECs do not use the LIDB provided by the incumbent LEC.<sup>5</sup> For this reason, if an independent inmate provider's OSP is failing to check the LNP database and simply relying exclusively on the incumbent LEC's LIDB, it may not check the correct LIDB on calls routed to CLEC end-users. That is the OSP's mistake, and it is not the the ILEC LIDB provider's responsibility.

This is one part of the problem with collect calls routed to CLEC end-users; another part of the problem is that CLECs routinely refuse to provide Billing Name and Address ("BNA") for their customers or to cooperate in billing collect calls originated by other providers. This may make it impossible for both ILECs and independents to bill collect calls sent to those numbers. Again, however, this is not a problem the ILEC can solve; and ILEC-affiliated inmate providers are every bit as prone to it as are independent providers.

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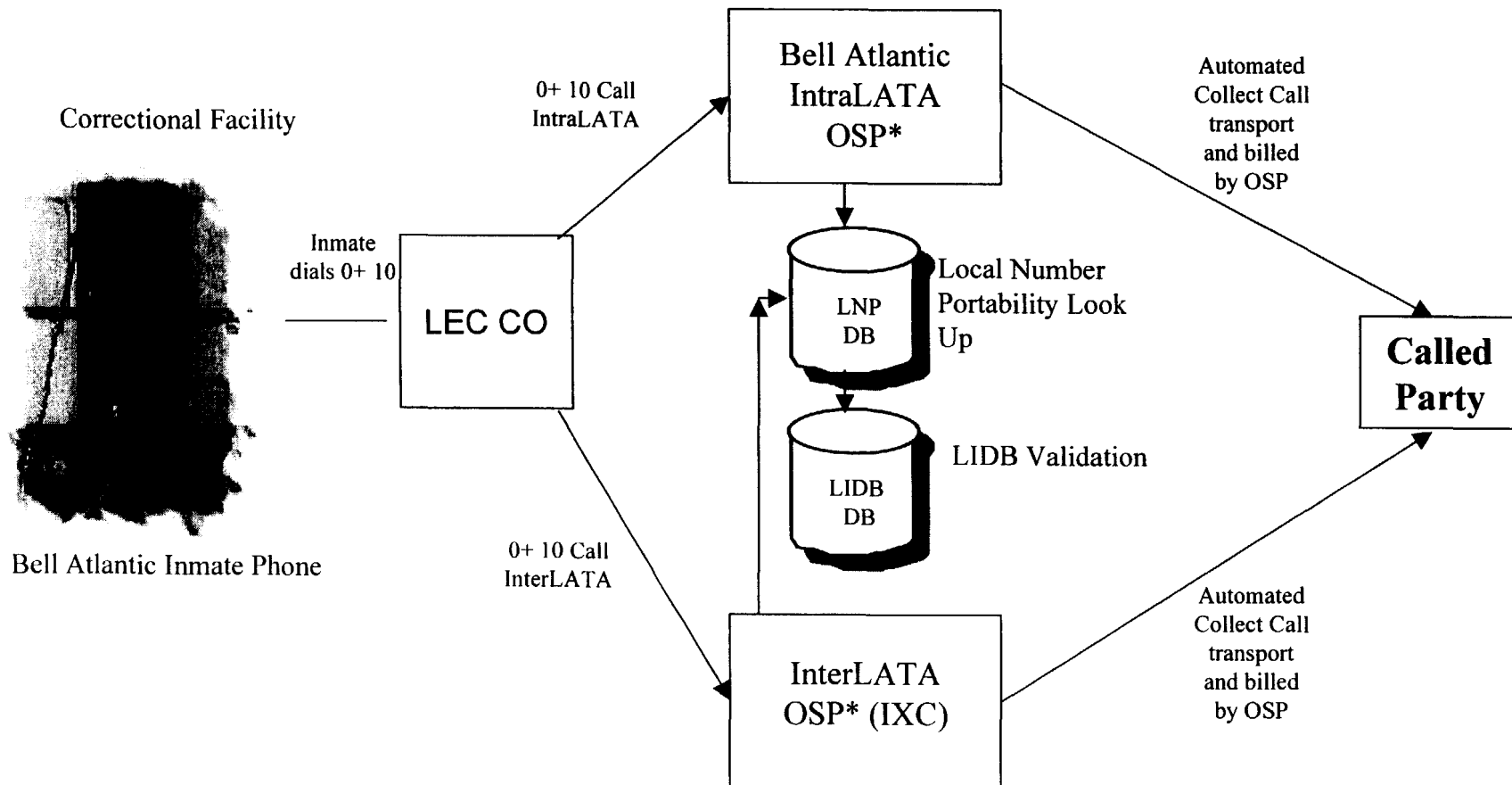
<sup>5</sup> In fact, some LECs who provide their own operator services nonetheless use third-party vendors' LIDB.

# Collect Calling from Pay Phones



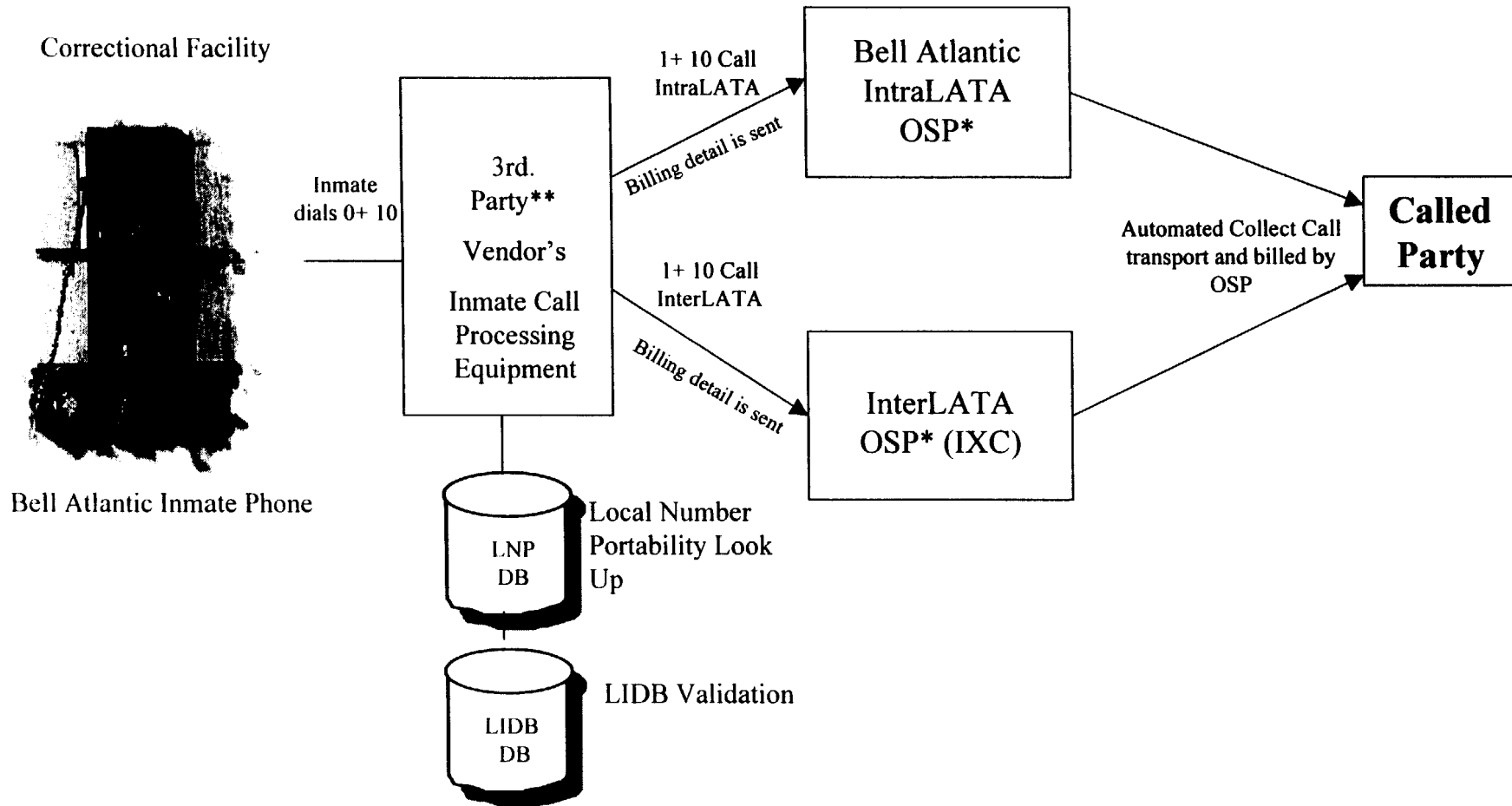
\*Pays PCC/Commission for collect calls originating from payphones in same manner as other alternatively billed calls (collect + third number)

# Inmate Collect Calling w/o Store and Forward



\*Pays PCC/Commission to Inmate Telephone Providers

# Inmate Collect Calling with Store and Forward



\*Pays PCC/Commission to Inmate Telephone Providers for calls made from their inmate phones

\*\*Inmate Call Processing equipment owned by 3rd party vendor is utilized in over 80% of prison accounts. In the remaining accounts, no call processing equipment is used (see chart 2)